

121 FERC ¶ 61,008
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

ISO New England, Inc. and
New England Power Pool

Docket No. ER07-365-003

ORDER ON COMPLIANCE FILING

(Issued October 1, 2007)

1. On August 6, 2007, ISO New England (ISO-NE) and the New England Power Pool (NEPOOL) Participants Committee (collectively, the Filing Parties) jointly submitted revisions to Market Rule 1 in compliance with the Commission's order issued on February 28, 2007.¹ The Filing Parties state that the revisions provide a process for exports of capacity across import-constrained capacity zones over tie lines to external regions. As discussed below, the Commission accepts the revisions, effective March 1, 2007, as requested.

I. Background

2. On December 22, 2006, the Filing Parties submitted proposed revisions to Market Rule 1 designed to memorialize the processes and methodologies used to determine the Installed Capacity Requirement (ICR) for the New England Control Area. Revisions to portions of the process for developing the ICR were needed to accommodate the Commission-approved Settlement Agreement establishing a Forward Capacity Market (FCM) in New England (FCM Settlement).²

3. The Long Island Power Authority (LIPA) protested the December 22, 2006 filing, claiming that ISO-NE's proposed revisions to Market Rule 1 failed to comply with section III.A.8 of the FCM Settlement addressing exports across constrained regions.

¹ *ISO New England, Inc.*, 118 FERC ¶ 61,157 (2007) (February 28 Order).

² *Devon Power, LLC*, 115 FERC ¶ 61,340, *order on reh'g and clarification*, 117 FERC ¶ 61,133 (2006).

LIPA's interest in this issue stems from its contract with Bear Swamp Power Company LLC (Bear Swamp) to purchase firm capacity and energy from generating capacity located in Massachusetts, for delivery through Connecticut (an import-constrained capacity zone) into Long Island by way of the Cross Sound Cable, on which LIPA holds 330 MW of firm transmission rights.

4. LIPA argued that, in order to properly account for capacity that is exported through a constrained zone, the Local Sourcing Requirement in the constrained region should be increased. LIPA asserted that the ISO-NE filing failed to adopt this concept.

5. The Commission determined in the February 28 Order that the rules proposed by ISO-NE did not provide a process by which an entity could obtain transmission rights for an export transaction through an import-constrained zone over tie-lines to external regions, as required by the FCM Settlement.³ While the Commission agreed with ISO-NE that an entity purchasing capacity from a resource located in an unconstrained zone (*i.e.*, Rest-of-Pool) is not entitled to export the capacity using constrained transmission capacity for which the entity has not paid for transmission capacity rights, the Commission found that ISO-NE's filing provided no process for an entity to acquire such transmission capacity rights. Without specifying a particular manner in which ISO-NE must satisfy the FCM Settlement requirement, the Commission directed ISO-NE to propose a process for such exports by August 27, 2007.

6. On August 6, 2007, ISO-NE filed proposed market rule changes to address the treatment of capacity exports in the Forward Capacity Auction (FCA), including details regarding the determination of import-constrained capacity zones for FCAs, the treatment of export bids, charges, and credits regarding export capacity, and the curtailment priority of capacity-backed energy exports. The Filing Parties request an effective date of March 1, 2007, consistent with the effective date for other market rule changes. They also request that the Commission issue an order no later than October 1, 2007, in order to assist ISO-NE in determining whether to model certain capacity zones and provide it with necessary inputs that will facilitate ISO-NE's preparation of its compliance filing of locational zone determinations and other FCM requirements, which is due on November 1, 2007.

II. The Compliance Filing

7. The Filing Parties, *inter alia*, proposed the following revisions. They state that the proposed revisions to section III.12.4 of Market Rule 1 will provide for export transactions to be considered as part of the process that determines capacity zones prior to each FCA. Specifically, the proposed changes will take into account export transactions as part of the Local Sourcing Requirement for a zone, and if this total Local Sourcing

³ February 28 Order, 118 FERC ¶ 61,157 at P 42.

Requirement exceeds or equals the current installed capacity of that zone, then the zone will be modeled as an import-constrained zone in the FCA.

8. The Filing Parties contend that the proposed revisions to section III.13.2.3.3(e) of Market Rule 1 will ensure that the appropriate amount of listed and de-listed capacity is modeled within the FCM at the appropriate location. Specifically, the Filing Parties explain that if a market participant is exporting capacity through an import-constrained capacity zone, ISO-NE proposes to treat the load associated with the capacity as if it were located in the import-constrained capacity zone. If the capacity related to the export that was modeled in the import-constrained zone clears in the subsequent FCA, then the associated capacity resource will be de-listed in the capacity zone where the resource is located. If the bid does not clear, then the associated resource will remain listed in the capacity zone where the resource is located.

9. In the new section III.13.7.2.3 of Market Rule 1, the Filing Parties propose that, in the event of price separation between the zone where a resource is located and the import-constrained zone, the market participant exporting capacity will pay the incremental difference in the capacity clearing price between the two capacity zones.

10. The Filing Parties revise section III.13.6.2.2.1 of Market Rule 1 to address the curtailment priority that will apply to energy associated with capacity exports through import-constrained capacity zones. Specifically, the Filing Parties explain that the market rule changes address two situations that can lead to curtailment; namely, a system-wide capacity deficiency and a local transmission constraint. The Filing Parties propose that during a system-wide capacity deficiency, to the extent that a market participant self-schedules energy from the resource associated with the capacity export, the export transaction will be assigned a transmission priority equal to native load customers and will thus be limited on a pro rata basis. On the other hand, the Filing Parties propose that in the event of a transmission constraint the export energy associated with a capacity export through an import-constrained capacity zone will be subject to curtailment on the same priority basis as other real-time external transactions.⁴

11. Finally, addressing the concerns raised by LIPA in the stakeholder process, the Filing Parties discuss allowing market participants who export capacity-backed energy the option to reduce the risk of curtailment due to transmission constraints and the

⁴ The Filing Parties note that certain Northeast Power Coordinating Council procedures place limitations on curtailment. Under these procedures, the source and sink control areas must coordinate with each other to ensure that curtailment will not create or worsen an emergency condition in the sink area. The two control areas must jointly resolve the emergency if the parties find that curtailment will in fact cause or worsen an emergency situation. Compliance Filing at 7.

allocation of reliability-related costs to such exports. If the market participant selects this option to reduce the curtailment risk, ISO-NE would then commit additional resources within the constrained exporting region, and the energy export would be charged a share of the resulting commitment costs. The Filing Parties, however, believe this matter is a separate issue from the compliance obligation imposed by the Commission. The Filing Parties state that changes to the market rule to provide this option will be proposed to stakeholders at the same time that they are reviewing conforming changes to the FCM Rules in the second quarter of 2008.

III. Notice of Filing and Responsive Pleadings

12. Notice of the Filing Parties' August 6, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 45,802 (2007), with interventions and protests due on or before August 27, 2007. On August 27, 2007, LIPA filed comments. On September 11, 2007, ISO-NE filed an answer in response to LIPA's comments. On September 24, 2007, LIPA filed a response to ISO-NE's answer.

A. LIPA's Comments

13. LIPA states that it supports the proposed changes to Market Rule 1. LIPA raises several issues, however, for which it asks the Commission to direct ISO-NE to make further changes by a date certain. Specifically, LIPA states that the FCM should reflect reliability benefits and curtailment issues for capacity-backed exports. LIPA avers that without these provisions, "market participants will not be treated on a comparable basis with internal loads for the capacity that they commit to on a forward basis and this lack of comparability may expose capacity exporters to significant risk of frequent curtailments as to render their capacity investments potentially uneconomic."⁵ LIPA states that the compliance filing does not provide options for a capacity-backed export besides curtailment to redress a local transmission constraint, even though options may exist. LIPA asks the Commission to direct ISO-NE to continue stakeholder discussions on these issues and to direct ISO-NE to file changes to the market rules such that they will be implemented in advance of the 2010 implementation of the FCM.

B. Answer of ISO-NE

14. In its answer to LIPA, ISO-NE largely agrees that LIPA's proposed changes would be desirable in the future. ISO-NE states that the initial proposals discussed with stakeholders contained draft provisions addressing these very concerns. ISO-NE removed these provisions, however, because stakeholders had not agreed which costs should be assigned to capacity-backed exports. Further, ISO-NE determined that the

⁵ LIPA Comments at 5.

issue of commitment costs would be addressed in the upcoming process to conform the energy market to the FCM design. Rather than establishing an exact date to file the proposed changes as LIPA requests, ISO-NE states that it intends to address the issues in the stakeholder process that will precede the market conformance effort, that will begin in the first quarter of 2008. ISO-NE also states that there are pricing issues that need to be worked out with the New York Independent System Operator, a neighboring control area, in order to find a market solution. Consequently, ISO-NE anticipates that this process will culminate in a filing with the Commission in the third quarter of 2008.

IV. Discussion

A. Procedural Matters

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept ISO-NE's answer to LIPA's comments because it has provided information that assisted us in our decision-making process. We are not persuaded to accept LIPA's response to ISO-NE's answer and will, therefore, reject it.

B. Commission Determination

16. In the February 28 Order, the Commission addressed the export of capacity from New England that originates in the Rest-of-Pool (*i.e.*, unconstrained) zone through an import-constrained zone to an external control area. The Commission stated that an entity exporting capacity using a constrained path should be required to obtain and pay for the transmission rights through the constrained area. The Commission noted that a transaction of this type will have an effect on the FCM's Local Sourcing Requirement in the affected import-constrained zone. The Commission concluded that the proposed tariff changes in the December 22, 2006 filing to determine the ICR did not provide a means for entities to acquire the transmission capacity rights to effectuate such a transaction; therefore, the proposed tariff changes did not fully comply with the previously referenced section of the FCM Settlement. Accordingly, the February 28 Order directed ISO-NE to file proposed changes that address this issue in accordance with the FCM Settlement.⁶ As discussed below, the Commission finds that the Filing Parties have sufficiently complied with the February 28 Order by developing a process to provide a mechanism to export capacity from New England through an import-constrained zone to an external control area that satisfies the FCM Settlement.

⁶ February 28 Order, 118 FERC ¶ 61,157 at P 43.

17. LIPA, the only party to comment on this filing, did not file a protest. In fact, LIPA states that it supports the proposed changes.⁷ LIPA states that the proposal more appropriately accounts for the impact of the capacity exported through a constrained zone, determines the amount of capacity that must be procured through the FCM, and also assigns any increased costs to the export.⁸

18. The provisions in the FCM Settlement as well as the Commission's directive in the February 28 Order were concerned with a process for capacity-backed exports to external control regions through import-constrained zones. ISO-NE's compliance filing resolves the issues originally raised by LIPA as to its Bear Swamp contract and the FCM Settlement with respect to exports of capacity across import-constrained zones. Implementation of these provisions will provide a method within the FCM framework for entities to obtain the necessary transmission rights. Therefore, we find that ISO-NE has complied with the Commission's February 28 Order. The Filing Parties request that the proposed rules become effective on March 1, 2007, consistent with the Market Rule changes approved by the Commission in the February 28 Order. We accept the proposed changes to be effective March 1, 2007, as requested.

19. LIPA also raises additional issues that it states remain unresolved by ISO-NE's compliance filing. Specifically, LIPA asks the Commission to direct ISO-NE to propose and file a process by which market participants exporting capacity-backed energy would have the option to reduce the risk of curtailment, if the market participant is willing to assume the associated reliability-related costs in the energy market. LIPA further asks the Commission to direct ISO-NE to develop market mechanisms to purchase energy from a neighboring control area rather than subjecting the exporting party to the full cost of curtailment. Finally, LIPA asks the Commission to direct a date certain for the filing of these provisions.

20. In its answer, ISO-NE agrees with LIPA that potential mechanisms to allow market participants exporting capacity-backed energy the option to reduce the risk of curtailment due to transmission constraints, and the allocation of reliability-related costs to such exports, is "a desirable addition to the market rules."⁹ ISO-NE anticipates that this issue of commitment costs will be addressed with stakeholders in the upcoming overall process of conforming the energy market to the FCM design, rather than dealing with the commitment cost issues in a piecemeal fashion.¹⁰ ISO-NE states that this

⁷ LIPA Comments at 4.

⁸ *Id.*

⁹ ISO-NE Answer at 3-4.

¹⁰ *Id.* at 4-5.

process is anticipated to culminate in a filing in the third quarter of 2008. More importantly, ISO-NE stated that, while it viewed this issue as important, “it is more appropriate to address this option mechanism in the context of the upcoming effort to conform other aspects of the ISO markets to the FCM design.”¹¹

21. With respect to LIPA’s concerns of the present risk of curtailment, we are mindful that any entity currently importing capacity or energy from an external control area (such as LIPA) to serve its load knows that its import can be subject to curtailment due to transmission constraints, and appropriate due diligence should include an assessment of this risk prior to entering such a contract. Such an entity therefore should make provisions to maintain reliability during curtailment conditions or events. LIPA appears to be seeking to reduce the risk of curtailment through economic non-curtailment options. This appears to be a reasonable request, and it also appears that ISO-NE is actively working cooperatively to address the issues raised by LIPA in sufficient time that the enhancements will be implemented in 2010. LIPA acknowledges that such discussions are taking place to address its concerns.

22. The Commission recognizes that ISO-NE and its stakeholders are developing further enhancements to the market rules that may address the issues raised by LIPA. We encourage these continued stakeholder discussions, and applaud ISO-NE's target goal of developing and implementing such resulting enhancements and related market rules in time for the 2010 FCM. We agree with ISO-NE, however, that the additional issues raised by LIPA are distinctly separate from the February 28 Order’s compliance directive. Because we find that ISO-NE's filing complies with our initial directive and renders the Market Rules consistent with the FCM settlement, we will not issue a new compliance directive with regard to LIPA’s concerns. Further, we agree with ISO-NE that it would be more productive if FCM issues are addressed comprehensively rather than piecemeal. At such time that stakeholders develop additional proposed enhancements and market rules, they should be filed by ISO-NE under section 205 of the Federal Power Act.¹²

¹¹ ISO-NE states that it plans to propose changes that would allow a capacity exporter to elect and pay for additional resource commitments in order to reduce the likelihood of curtailment to its export. Compliance Filing at 7.

¹² 16 U.S.C. § 824d (2000).

23. Accordingly, we accept ISO-NE's filing in compliance with the Commission's directives in the February 28 Order.

The Commission orders:

The market rule changes proposed in ISO-NE's August 6, 2007 filing are hereby accepted in compliance of the Commission's February 28 Order, to be effective March 1, 2007, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.